

1 HONORABLE RONALD B. LEIGHTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 LEVI BUSSANICH,  
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11 Plaintiff,

v.

12 ADULT VIDEO ONLY, INC.,  
13 Defendant.

CASE NO. C16-5231RBL

ORDER DENYING MOTION TO  
DISMISS

14 THIS MATTER is before the Court on Defendants' Motion to Dismiss Pursuant to FRCP  
15 12(b)(6) – Failure to State a Claim Upon Which Relief May Be Granted; and All Parties' Causes  
16 of Action Are Time Barred [Dkt. #24]. The Court has reviewed the materials<sup>1</sup> submitted in favor  
17 of, and in opposition to, the motion. Oral argument is not necessary to the resolution of the  
18 issues presented in the motion. For the following reasons, the motion is **DENIED**.

19 **I. BACKGROUND**

20 Plaintiff's Complaint describes a tale of long-standing criminal activity by the named-  
21 defendants, to include arson, attempted arson, tax fraud, money laundering, and the planning of a  
22 murder for hire. The most direct harm against the plaintiffs was the 2003 torching of their  
23 business in Vancouver. The fire was investigated by law enforcement, including the Bureau of  
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1 Alcohol, Tobacco and Firearms for ten years, culminating in 2013 with an indictment of Mark  
2 Fuston. Fuston's active accomplice in the arson of the plaintiff's business was Ken Courtney.  
3 Courtney committed suicide in November 2007.

4 The criminal case against Mark Duane Fuston a/k/a "Mau Mau" was resolved with a Plea  
5 to Conspiracy to Commit Arson of a Building Used in or Affecting Interstate Commerce in  
6 violation of Title 18 U.S.C. Section 371. He was sentenced to a term of 30 months. In the  
7 Statement of Fact portion of the Plea Agreement, Fuston admitted that he was or would be paid  
8 for burning down the plaintiffs' business.

9 In the Complaint of this civil action, plaintiffs allege that over a ten-year period the ATF  
10 continued a confidential investigation into the arson fire. The targets of that investigation were  
11 Daniel and Donna Cossette and Michael and Linda Wright, owners of a competing business to  
12 plaintiffs. A confidential informant was able to get close to Ken Courtney – an employee of the  
13 Cossettes and Wrights – and gather compromising information which justified a search warrant  
14 of Courtney's residence. Courtney then admitted that the named defendants requested him and  
15 Fuston to burn down the plaintiffs' business.

16 Because of the confidential nature of the criminal investigation coupled with the  
17 misdirection by the defendants in leading the plaintiffs away from the conclusion that defendants  
18 were behind the arson, plaintiffs did not know or could not know who was responsible for the  
19 arson prior to 2013. Plaintiffs assert that their Complaint is timely and not time-barred.

20 **II. DISCUSSION**

21 **A. Equitable Tolling**

22 Under Washington State's equitable tolling doctrine, a "cause of action accrues, and the  
23 statute of limitations begins to run, when the plaintiff discovers or reasonably could have  
24 discovered *all the essential elements* of the cause of action." *Allyn v. Boe*, 943 P.2d 364, 372-73

1 (Wash. App. Div. 2 1997) (emphasis added) (holding doctrine applied in trespass action where  
 2 defendant first denied wrongdoing, “frustrat[ing]” plaintiff, and where investigation of expert  
 3 was required to uncover the truth) (citing *In re Estates of Hibbard*, 118 Wash.2d 737, 744, 826  
 4 P.2d 690 (1992)); *United States Oil & Ref. Co. v. State Department of Ecology*, 96 Wash.2d 85,  
 5 92, 633 P.2d 1329 (1981). “And the statute does not begin to run until the plaintiff knows or with  
 6 reasonable diligence should know that the defendant was the responsible party.” *Allyn*, 943 P.2d  
 7 at 372-73 (citing *Orear v. International Paint Co.*, 59 Wash.App. 249, 257, 796 P.2d 759 (1990)).

8 In the Ninth Circuit, the doctrine of equitable tolling “is demanded by sound legal  
 9 principles as well as the interests of justice.” *Socop-Gonzalez v. I.N.S.*, 272 F.3d 1176, 1184-85  
 10 (9th Cir. 2001) (holding “[a]ll one need show is that by the exercise of reasonable diligence the  
 11 proponent of tolling could not have discovered essential information bearing on the claim”)  
 12 (emphasis added); see also *Coppinger-Martin v. Solis*, 627 F.3d 745, 750 (9th Cir. 2010); *Stitt v.*  
 13 *Williams*, 919 F.2d 516, 522 (9th Cir. 1990). Accordingly, this Circuit has emphasized,  
 14 “[b]ecause the applicability of the equitable tolling doctrine often depends on matters outside the  
 15 pleadings, it is not generally amenable to resolution on a Rule 12(b)(6) motion.” *Supermail*  
 16 *Cargo, Inc., v. United States*, 68 F.3d 1204, 1206-07 (9th Cir. 1995). This is because “equitable  
 17 tolling will serve to extend the statute of limitations for filing suit until the plaintiff can gather  
 18 what information he needs.” *Solis*, 627 F.3d at 750 (emphasis added). Certainly, evidence of  
 19 who injured you is “essential information bearing on the claim.” See *Socop-Gonzalez*, 272 F.3d  
 20 at 1184-85; *Solis*, 627 F.3d at 750; *Stitt*, 919 F.2d at 522. The claims are equitably tolled under  
 21 these circumstances.

22 **B. Complaint Supports a Prima Facie Case of RICO Violations**

23 Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain  
 24 statement of the claim showing that the pleader is entitled to relief.” Rule 8 does not require “detailed

1 factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me  
 2 accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009)  
 3 (internal quotation marks and citation omitted).

4 Whether a complaint's factual allegations are sufficient to show that "the pleader is entitled  
 5 to relief" must be judged in light of the substantive legal standards governing the claim. "[T]he  
 6 appropriate level of generality for a pleading depends on the particular issue in question or the  
 7 substantive context of the case before the court." 5 Charles A. Wright & Arthur R. Miller, *Federal*  
 8 *Practice and Procedure* §1218, at 273 (3d ed. 2004) ("Wright & Miller").

9 To be sustained against a Motion to Dismiss, a claim must have facial plausibility, which it  
 10 does when it sets out facts that permit the court to draw the reasonable inference that the defendant is  
 11 liable to the plaintiff for the misconduct alleged. *Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949.

12 A review of the Complaint describes a comprehensive and persistent effort to monopolize the  
 13 adult store business wherever the defendants operate their stores: Portland, Vancouver, Spokane.  
 14 The defendants are alleged to have paid arsonists to burn down competitors' stores. The Complaint  
 15 also alleges a pattern of tax evasion and money laundering activities.

16 "RICO is to be read broadly" to permit recovery for direct and indirect damages which flow  
 17 from the commission of predicate acts. U.S.C. § 1964 (c); *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473  
 18 U.S. 479, 498 (1985); *see also Cty. of Oakland by Kuhn v. City of Detroit*, 784 F. Supp. 1275, 1283  
 19 (E.D. Mich. 1992); *Micro-Med. Industries, Inc. v. Hatton*, 607 F. Supp. 931, 938 (D.P.R. 1985)  
 20 (holding "upon a Motion to Dismiss for failure to state a claim, it is not for us to rein in the  
 21 deliberately broad swath of the brush chosen by Congress to blot out the activities of organized  
 22 crime.") (citing *U.S. v. Turkette*, 452 U.S. 576, 586-87 (1981)). This is because "[t]he statute's  
 23 remedial purposes are nowhere more evident than in the provision of a private action for those  
 24 injured by racketeering activity." *Sedima, S.P.R.L.*, 473 U.S. at 498. Notably, no distinct  
 "racketeering injury" is necessary to maintain a private treble damages action under RICO; if a

1 defendant engages in a pattern of racketeering activity in a manner forbidden by section 1962 and the  
2 racketeering activities injured the plaintiff in his business or property, the plaintiff has a private claim  
3 for treble damages. *Sedima, S.P.R.L.*, 473 U.S. at 495.

4 **III. CONCLUSION**

5 The Complaint provides a “short and plain statement of the claims showing that the  
6 pleader is entitled to relief.” FRCP 8(a)(2). The claim is not time barred. The Motion to  
7 Dismiss is **DENIED**.

8 **IT IS SO ORDERED.**

9 Dated this 2<sup>nd</sup> day of September, 2016.

10   
11 Ronald B. Leighton

12 Ronald B. Leighton  
United States District Judge

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14 <sup>1</sup> The Defendant’s Motion for Leave to File a Late Reply [Dkt. #31] is **GRANTED**.  
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